

COA No. 37396-3-II

S.Ct. No. 82194-1

the supreme court  
THE SUPREME COURT  
OF THE  
STATE OF WASHINGTON

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STATE OF WASHINGTON

IN RE: PERSONAL RESTRAINT PETITION OF,  
  
JAMES W. GRANTHAM,  
  
PETITIONER,

REPLY TO THE STATE'S SUPPLEMENTAL BRIEF

EVIDENTIARY HEARING REQUESTED

 3/4/09  
JAMES W. GRANTHAM, PRO SE  
1830 EAGLE CREST WAY  
CLALLAM BAY, WA 98326-9723

REPLY TO STATES RESPONSE

Pursuant to RAP 10.2 (d) and 10.3(c), Petitioner James W. Grantham pro se, hereby replies to the state's "Supplemental Brief of The Department of Corrections" (hereafter "STATES RESPONSE").

I

I. STATEMENT OF THE CASE

On December 12, 2007, during a disciplinary hearing petitioner was found guilty of violating WAC rules 137-28-030 (603) and 137-285-030 (606). The sanctions imposed consisted of 7 days loss of yard privileges, 90 days loss of good conduct time and 25 days in disciplinary segregation. n.1

Petitioner appealed the guilty findings which were upheld by D.O.C., then petitioner filed a PRP in which he raised numerous issues, and the Court of Appeals dismissed the PRP on August 29, 2008. And now petitioner is seeking discretionary review of the unpublished order dismissing petitioners PRP. n.2

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1. The statement of this case is set out on pages 2-3 in petitioners Amended Motion for Discretionary review ("PDR") and on pages 1-4 in petitioners Motion to Amend.

2. The issues and arguments are set out on pages 4-12 in PDR.

## II. ARGUMENT AND REPLY TO STATES RESPONSE

### A. THE RELAXED STANDARD ANNOUNCED IN ISADORE DOES APPLY TO PRISON DISCIPLINARY PROCEEDINGS.

The state argues that the relaxed standard of review enuciated in In re Isadore, 151 Wn.2d 294,299,88 P.3d 390 (2004), is not applicable to PRP's involving prison disciplinary proceedings, the state contends that the court in Isadore relied on the holding in In re Cashaw,123 Wn.2d 133,866 P.2d 8(1994), and that niether Cashaw nor Isadore involved prison disciplinary proceedings.

Petitioner agrees with the Commissioner that the relaxed standard of review enuciated in Isadore is applicable to PRP's involving prison disciplinary proceedings, because the Court in Isadore also relied on the holding in In re Garcia, 106 Wn. App. 625,628,24 P.3d 1091,33 P.3d 750 (2001).

Where the petitioner has not had a prior opportunity for judicial review, we do not apply the heightened requirements applicable to PRP's. Instead, the petitioner need show only that he is restrained under RAP 16.4(b) and the restraint is unlawfull under RAP 16.4(c). Isadore, 151 Wn. 2d at 299; (citing Garcia 106 Wn. App. at 628).

In Garcia, the petitioner brought a PRP challenging the department of correction's revocation of good conduct time credits for failure to participate in chemical dependency treatment classes. He claimed the treatment program violated his first amendment rights. In discussing the standard of review to be applied we noted that Garcia, had no previous or alternative avenue for obtaining judicial review. Therefore the court held Garcia was not required to satisfy the standard threshold requirements of a PRP; rather was required to satisfy RAP 16.4 by showing that he was restrained and the restraint was unlawful. Garcia, 106 Wn. App. at 629.

The states argument is without merit because this Court has clarified in Isadore that the actual and substantial prejudice standard does not apply to [prison disciplinary proceedings] as relied on in Garcia, and also probation issues as relied on in Cashaw, Isadore, 151 Wn.2d at 299.

B. WHEN PROCEDURAL REGULATIONS REGARDING PRISON DISCIPLINARY HEARINGS ARE NOT FOLLOWED THEY DO CREATE A LIBERTY INTEREST AND DENY PETITIONER MINIMAL DUE PROCESS.

Inmates are entitled to minimal due process in disciplinary hearings including; (1) written notice of charges at least 24 hours in advance of the hearing; (2) an opportunity to present evidence or witnesses; and (3) a written statement of the disciplinary findings. Wolff v. McDonnell, 418 U.S. 539, 563-66, 94 S.Ct. 2963, 41 L.Ed. 2d 935 (1974). Implicit in this requirement of a written statement is that there must be "some evidence" to support the finding of guilt. Superintendent v. Hill, 472 U.S. 445, 455, 105 S.Ct. 2768, 86 L.Ed. 2d 356 (1985).

Where, as here, a statute permits an inmate to earn good time credits, the inmate has a constitutionally protected liberty interest in those credits which prevents their deprivation absent observation of minimum due process requirements Hill 472 U.S. at 453.

The report did not include the time and place of the infraction beyond October 2007 and Tacoma. Furthermore petitioner filed a public disclosure request to get the phone records for (253)-905-0525 which according to the infraction report was the number that was allegedly used by petitioner and his brother for transactions and introducing contraband in October 2007. However from the public

disclosure request the record shows that petitioner did not call (253)-905-0525 during the month of October 2007. See phone records in Appendix B of PDR.

The ambiguous description of events in the infraction report fails to provide sufficient notice so that petitioner can prepare a defense. Had petitioner been given a transcribed copy or the tape recorded copy of this alleged phone conversation he could have raised a defense and interpret what was allegedly said. This would have been essential documentary evidence that could have been presented at the hearing. By failing to provide petitioner with a copy of the phone record he was denied access to crucial evidence that would have proved his innocence.

Petitioner was not provided the requisite due process of law and there was [no evidence] of his guilt. The basis for the guilty findings was an alleged overheard phone conversation between petitioner and his brother regarding transactions and introducing contraband by a mystery officer at a mystery time and date.

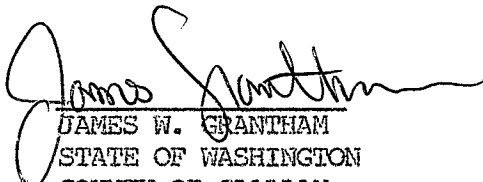
Petitioner respectfully requests this Court afford him liberal construction of this pleading keeping in accordance with Haines v. Kerner, 404 U.S. 520,521 (1972).

III. CONCLUSION

Petitioner prays this Court accepts review of his petition and orders D.O.C. to dismiss the infractions and guilty findings and expunge them from petitioner's record.

I JAMES W. GRANTHAM, declare under the penalty of perjury under the laws of the state of washington that the facts set out in this reply brief are true and correct and the documents that I have submitted to the court of appeals and to the washington state supreme court for COA No. 37396-3-II and S.Ct. No. 82194-1 are true and correct copies and I am competent to testify to the facts stated in this declaration for which I have firsthand knowledge unless otherwise stated.

SIGNED IN CLALLAM BAY, WASHINGTON THIS 4TH DAY OF MARCH 2009.

  
JAMES W. GRANTHAM  
STATE OF WASHINGTON  
COUNTY OF CLALLAM  
1830 EAGLE CREST WAY  
CLALLAM BAY, WA 98326-9723

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

IN RE: PERSONAL RESTRAINT PETITION OF,

JAMES W. GRANTHAM,  
Petitioner,

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PROOF OF SERVICE

I, JAMES W. GRANTHAM, pro se, do declare that on the 4th day  
of March, 2009. I have served the enclosed REPLY TO  
THE STATE'S SUPPLEMENTAL BRIEF.

on every other person required to be served, by presenting an envelope to state prison  
officials at the Clallam Bay Corrections Center, containing the above documents for  
U.S. mailing properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

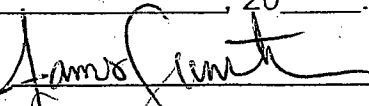
ATTORNEY GENERAL FOR WASHINGTON STATE

P.O. BOX 40116

OLYMPIA, WA 98504-0116

I declare under penalty of perjury under the laws of the State of Washington,  
pursuant to RCW 9A.72.085, and the laws of the United States, pursuant to Title 28  
U.S.C. § 1746, that the foregoing is true and correct.

Executed on this 4th day of MARCH, 2009.

  
JAMES W. GRANTHAM  
Clallam Bay Corrections Center  
1830 Eagle Crest Way  
Clallam Bay, WA 98326-9723

Pro se